

**Department of State Health Services
Agenda Item for State Health Services Council
October 10-11, 2007**

Agenda Item Title: Proposed repeal of 25 TAC §§411.401 – 411.414, concerning the TDMHMR In-Home and Family Program

Agenda Number: 4-e

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The In-Home and Family Support Program was developed to provide assistance to persons with mental disabilities and their families to support a person's ability to live at home, or integration into the community, or promotion of self-sufficiency. The Program has always been contingent upon the availability of funds.

Summary:

The repeals are proposed because the program has not been funded for several years and there is no indication or expectation that funding will be provided in the future. The proposal also implements the required Government Code, §2001.039, agency review of rules because the department has determined that rules governing the program are no longer necessary. Repeal of the rules will have no fiscal impact.

Summary of Stakeholder Input to Date (including advisory committees):

The Texas Council for Community MHMR Centers and the Mental Health Advisory Council (MHPAC) were invited by email to provide informal input regarding the proposed repeals. Several members of the MHPAC requested and received clarification about the reasons for the repeal via email.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item # 4-e.

Agenda Item Approved by: Joe Vesowate

Presented by: Mike Maples **Title:** Director, Program Services Section

Program/Division: MHSA **Contact Name/Phone:** Janet Fletcher, 512/419-2673

Date Submitted
July 16, 2007

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 411. State Mental Health Authority Responsibilities
Subchapter I. TDMHMR In-Home and Family Support Program
Repeal §§411.401- 411.414

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§411.401 – 411.414, concerning the in-home and family support program.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 411.401 - 411.414, relating to TDMHMR In-Home and Family Support Program, have been reviewed and the department has determined that the reasons for adopting these sections no longer exist, and the rules are proposed for repeal. Funding for the services addressed by these rules has not been provided for several years. There is no indication nor reasonable expectation that funds will be appropriated by the legislature for these services in the future.

SECTION-BY-SECTION SUMMARY

Chapter 411, Subchapter I, concerning the in-home and family support program is being repealed in its entirety. Because this program is no longer being funded, rules governing the program are unnecessary.

FISCAL NOTE

Machelle Pharr, the department's Chief Financial Officer, has determined that for each year of the first five-year period that the repeal of the sections will be in effect, there will be no fiscal implications to state or local governments as the program will not exist.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Wilson Day, Director of the department's Budget Section, has also determined that there will be no effect on small businesses or micro-businesses to comply with the sections as proposed. This was determined by interpretation of the rules that these entities will not be required to alter their business practices as a result of the repeals. There are no anticipated economic costs to persons as a result of the proposed repeals, and there is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Joe Vesowate, the department's Assistant Commissioner for Mental Health and Substance Abuse Services, has also determined that for each year of the first five years the repealed sections are in effect, the public will benefit. The public benefit anticipated as a result of repealing the sections is that the department will maintain a clear, concise set of relevant rules and eliminate potential for confusion.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the repeals would not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of Government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed repeal may be submitted in writing to Janet Fletcher, Department of State Health Service, Mail Code 2082, 909 West 45th Street, Austin, Texas 78751, or by e-mail to janet.fletcher@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Government Code, Chapter 531, Health and Safety Code, Chapters 533, 535, and 1001. Review of the sections implements Government Code, §2001.039.

Sections for Repeal

- §411.401. Purpose.
- §411.402. Application.
- §411.403. Definitions.
- §411.404. TDMHMR In-Home and Family Support Program--Criteria, Purpose, and Limitations.
- §411.405. Allowable Costs.
- §411.406. Unallowable Costs.
- §411.407. Eligibility Determination.
- §411.408. Applying for Assistance and Processing Applications.
- §411.409. Written Plan and Disbursing Assistance.
- §411.410. Administrative Implementation.
- §411.411. Appeal.
- §411.412. Exhibits.
- §411.413. References.
- §411.414. Distribution.

~~§411.401. — Purpose. The purpose of this subchapter is to describe the requirements for administering the TDMHMR In Home and Family Support Program.~~

~~§411.402. — Application. This subchapter applies to administering agencies designated by TDMHMR to administer the TDMHMR In Home and Family Support Program.~~

~~§411.403. — Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:~~

~~_____ (1) Adaptive aid A device that enables a person to perform or participate in daily living activities or to control his or her living environment.~~

~~_____ (2) Administering agency An entity that TDMHMR designates to administer the TDMHMR In Home and Family Support Program in a specified area.~~

~~_____ (3) Assistance A subsidy granted under the TDMHMR In Home and Family Support Program to a person or family to expend on items that meet the criteria described in §411.404(a)(1)-(2) of this title (relating to TDMHMR In Home and Family Support Program—Criteria, Purpose, and Limitations):~~

~~_____ (4) Assistive technology A product, device, or equipment that is used to maintain, increase, or improve the functional capabilities of a person to perform or participate in daily living activities or to control his or her living environment.~~

~~_____ (5) Co-payment percentage The percentage of assistance that the recipient must pay for an item.~~

~~_____ (6) Date of eligibility The documented date that the administering agency determines the person or family is eligible for assistance in accordance with §411.407 of this title (relating to Eligibility Determination).~~

~~_____ (7) Developmental delay Pursuant to the Interagency Council on Early Childhood Intervention's rules governing early childhood intervention §621.22(9) of this title (relating to Definitions), a significant variation in normal development in one or more of the following areas as measured and determined by appropriate diagnostic instruments or procedures administered by an interdisciplinary team and by informed clinical opinion:~~

~~_____ (A) cognitive development;~~

~~_____ (B) physical development, including vision and hearing, gross and fine motor skills, and nutrition status;~~

~~_____ (C) communication development;~~

~~_____ (D) social and emotional development; and~~

~~_____ (E) adaptive development.~~

~~_____ (8) Emergency A documented:~~

~~_____ (A) life threatening situation of a person;~~

~~_____ (B) impending out of home placement of a person; or~~

~~_____ (C) impending psychiatric hospitalization of a person.~~

~~_____ (9) Family Those individuals who live with the person in the person's natural home, and who may include:~~

~~_____ (A) the person's family members (as defined);~~

~~_____ (B) the person's guardian; and~~

~~_____ (C) no more than three unrelated individuals or individual groups. For the purposes of this subchapter, an individual group is two or more individuals who are related to each other.~~

- ~~_____ (10) Family member An individual who is related to the person by blood, marriage, or adoption.~~
- ~~_____ (11) Guardian An individual appointed by a court of competent jurisdiction to be guardian of the person in accordance with the Texas Probate Code, Chapter XIII.~~
- ~~_____ (12) Local authority An entity designated by the commissioner in accordance with the Texas Health and Safety Code, §533.035(a).~~
- ~~_____ (13) Mental disability Mental retardation, mental illness, pervasive developmental disorder, or developmental delay.~~
- ~~_____ (14) Mental illness Pursuant to the Texas Health and Safety Code, §571.003, an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that:~~
- ~~_____ (A) substantially impairs a person's thought, perception of reality, emotional process, or judgement; or~~
- ~~_____ (B) grossly impairs behavior as demonstrated by recent disturbed behavior.~~
- ~~_____ (15) Mental retardation Pursuant to the Texas Health and Safety Code, §591.003, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.~~
- ~~_____ (16) Natural home The place the person lives in the community, either independently (with or without roommates) or with his or her family, in which natural support systems, such as family, friends, and services available to the general population, are available to the person.~~
- ~~_____ (17) Other support program Any form of local, state, or federal support or service, other than assistance provided through the TDMHMR In Home and Family Support Program, or any support or service provided with public or private funds to people with mental or physical disabilities or their families.~~
- ~~_____ (18) Over the counter medication A medication that can be sold legally without a doctor's prescription.~~
- ~~_____ (19) Person As appropriate to the context in which the term is used, the individual with a mental disability:~~
- ~~_____ (A) who lives independently and who intends to apply or who has applied for assistance; or~~
- ~~_____ (B) whose family intends to apply for assistance or whose family has applied for assistance.~~
- ~~_____ (20) Pervasive developmental disorder A disorder beginning in childhood, including autism, that meets the criteria for pervasive developmental disorder established in the most recent edition of the Diagnostic and Statistical Manual (DSM).~~
- ~~_____ (21) Physical disability A physical impairment that:~~
- ~~_____ (A) is likely to continue indefinitely;~~
- ~~_____ (B) results in substantial functional limitations in one or more of the following areas of major life activity:~~
- ~~_____ (i) self care;~~
- ~~_____ (ii) receptive and expressive language;~~
- ~~_____ (iii) learning;~~
- ~~_____ (iv) mobility;~~
- ~~_____ (v) self direction;~~

- ~~_____ (vi) capacity for independent living;~~
- ~~_____ (vii) economic self sufficiency; and~~
- ~~_____ (C) reflects the need for care, treatment, services or supports, which are of lifelong or extended duration and which are individually planned and coordinated.~~
- ~~_____ (22) Recipient—A person or family who currently receives assistance.~~
- ~~_____ (23) Restraint device—Chemical, physical, or mechanical means used to restrict free movement of a part or the whole person to control physical activity for the purpose of preventing or managing maladaptive behavior. The term does not include assistive technology and adaptive aids.~~
- ~~_____ (24) Specialized nutritional product—A food product or supplement, including a vitamin, mineral, or herbal supplement, that is medically necessary and prescribed by a physician to treat a specific symptom of a mental disability or physical disability.~~
- ~~_____ (25) Third party resource—Funding available to the person or family (e.g., public or private insurance, foster care reimbursements, trust, court settlement), that is not from any other support program (as defined).~~
- ~~_____ (26) Vendor fiscal intermediary—An individual or agency who provides payroll and tax services for a recipient who is an employer, as determined in accordance with §411.408(d) of this title (relating to Applying for Assistance and Processing Applications).~~

~~§411.404. TDMHMR In-Home and Family Support Program—Criteria, Purpose, and Limitations.~~

- ~~_____ (a) The TDMHMR In-Home and Family Support Program was developed pursuant to the Texas Health and Safety Code, Chapter 535, to provide assistance to eligible persons and families to expend on items that meet the following criteria.~~
 - ~~_____ (1) The item meets a need that exists solely because of the person's mental disability or co-occurring physical disability and:~~
 - ~~_____ (A) directly supports the person to live in his or her natural home;~~
 - ~~_____ (B) integrates the person into the community; or~~
 - ~~_____ (C) promotes the person's self sufficiency.~~
 - ~~_____ (2) The item is:~~
 - ~~_____ (A) not listed as an unallowable cost in §411.406 of this title (relating to Unallowable Costs); and~~
 - ~~_____ (B) not paid for in full or reimbursed in full by a third party resource.~~
- ~~_____ (b) The TDMHMR In-Home and Family Support Program provides assistance to eligible persons and families in accordance with this subchapter and to the extent funds are available.~~
- ~~_____ (c) The TDMHMR In-Home and Family Support Program does not provide assistance solely to improve the living conditions of eligible persons or families living at or below the poverty level. Assistance is neither an entitlement nor an income supplement.~~
- ~~_____ (d) The TDMHMR In-Home and Family Support Program is a program of last resort; therefore, assistance may not be used to supplant items available to an eligible person or family through any other support program or third party resource. However, assistance may be used to:~~
 - ~~_____ (1) supplement items provided through any other support program;~~
 - ~~_____ (2) supplement items paid for or reimbursed by a third party resource; or~~
 - ~~_____ (3) to assist eligible persons and families who are currently waiting for items to be provided through any other support program.~~

~~§411.405. Allowable Costs.~~

~~_____ (a) Assistance may be used to pay for any item described in this section if the item meets the criteria described in §411.404(a) of this title (relating to TDMHMR In-Home and Family Support Program Criteria, Purpose, and Limitations).~~

~~_____ (1) Special equipment as follows:~~

~~_____ (A) therapy equipment, as recommended by a physical or occupational therapist following evaluation;~~

~~_____ (B) motorized or hand-powered lift;~~

~~_____ (C) mobility equipment, as recommended by a physician, or physical or occupational therapist following evaluation;~~

~~_____ (D) medical equipment, as prescribed by a physician; and~~

~~_____ (E) assistive technology (as defined), as recommended by a physical, occupational, or speech therapist following evaluation.~~

~~_____ (2) Architectural modifications to the person's natural home as follows:~~

~~_____ (A) ramp, porch, or sidewalk;~~

~~_____ (B) handrail;~~

~~_____ (C) room construction, with the limitations described in subsection (b)(1) of this section; and~~

~~_____ (D) house renovation.~~

~~_____ (3) Health services as follows:~~

~~_____ (A) therapy, as recommended by a physician, or physical, occupational, or speech therapist following evaluation;~~

~~_____ (B) diagnostic service;~~

~~_____ (C) medication, as prescribed by a physician, with the limitations described in subsection (b)(2) of this section;~~

~~_____ (D) surgery, as recommended by a physician, or oral surgery, as recommended by a dentist;~~

~~_____ (E) laboratory service, as prescribed by a physician;~~

~~_____ (F) dental, as recommended by a dentist;~~

~~_____ (G) non-durable or disposable supply;~~

~~_____ (H) adaptive aid (as defined), as recommended by a physical or occupational therapist following evaluation; and~~

~~_____ (I) specialized nutritional product, as prescribed by a physician, with the limitations described in subsection (b)(3) of this section.~~

~~_____ (4) Counseling and training services as follows:~~

~~_____ (A) counseling;~~

~~_____ (B) behavior therapy;~~

~~_____ (C) behavioral coach service provided under the supervision of a behavior therapist;~~

~~_____ (D) independent or daily living training;~~

~~_____ (E) family or caregiver training;~~

~~_____ (F) job coach services; and~~

~~_____ (G) remedial education for an adult.~~

~~_____ (5) Home care services as follows:~~

~~_____ (A) home health aide service, as prescribed by a physician;~~

~~_____ (B) homemaker service; and~~
~~_____ (C) personal assistant service;~~
~~_____ (D) attendant support for participation in after school activities for:~~
~~_____ (i) a person 17 years of age or under; or~~
~~_____ (ii) a person age 18, 19, 20, 21, or 22 years who is enrolled and attends public school;~~
~~_____ (E) attendant support for participation in summer activities for:~~
~~_____ (i) a person 17 years of age or under; or~~
~~_____ (ii) a person age 18, 19, 20, or 21 years who is enrolled to attend public school in the fall semester following that summer;~~
~~_____ (F) specialized child care for a person age 13 years or older; and~~
~~_____ (G) specialized child care for a person under age 13 years, with limitations described in subsection (b)(4) of this section.~~
~~_____ (6) Transportation as follows:~~
~~_____ (A) out of town transportation, room, and board for evaluation and treatment;~~
~~_____ (B) public transportation;~~
~~_____ (C) mileage reimbursement, with limitations described in subsection (b)(5) of this section;~~
~~_____ (D) short term vehicle rental; and~~
~~_____ (E) major vehicle repair, with limitations described in subsection (b)(6) of this section.~~
~~_____ (7) Respite care as follows:~~
~~_____ (A) in home respite; and~~
~~_____ (B) out of home respite.~~
~~_____ (8) Other items as agreed upon by the person or family and administering agency that meet the criteria described in §411.404(a) of this title (relating to TDMHMR In-Home and Family Support Program Criteria, Purpose, and Limitations), including:~~
~~_____ (A) housing related expenses, with limitations described in subsection (b)(7) of this section, as follows:~~
~~_____ (i) housing start up, which is rent and rent deposit, utilities and utilities deposit, and minimal furniture and appliances; and~~
~~_____ (ii) housing; and~~
~~_____ (B) vendor fiscal intermediary fees that are related to an eligible person or family being an employer of a service provider who is paid with assistance, as determined in accordance with §411.408(d) of this title (relating to Applying for Assistance and Processing Applications).~~
~~_____ (b) Limitations are placed on the following costs listed in subsection (a) of this section.~~
~~_____ (1) Allowable costs for room construction are limited to situations in which:~~
~~_____ (A) house renovation is not feasible; and~~
~~_____ (B) the room constructed will be used primarily by the person on a daily basis.~~
~~_____ (2) Psychoactive medications are limited to no more than a two month supply per fiscal year.~~

~~_____ (3) Allowable costs for a specialized nutritional product (as defined) are limited to those costs in excess of routine food and nutritional costs.~~
~~_____ (4) Allowable costs for specialized child care for a child under the age of 13 years are limited to those costs in excess of the prevailing rate for routine child care.~~
~~_____ (5) Mileage reimbursement may not exceed the state-reimbursed mileage rate.~~
~~_____ (6) Limitations on major vehicle repair.~~
~~_____ (A) Allowable costs for major vehicle repair are limited to costs necessary:~~
~~_____ (i) for the vehicle to be legally operational; and~~
~~_____ (ii) to repair the vehicle's air conditioning if the vehicle is the person's primary mode of transportation and a physician determines that the person requires air conditioning while traveling in the vehicle.~~
~~_____ (B) Major vehicle repair does not include routine vehicle maintenance.~~
~~_____ (7) Housing-related expenses are limited to no more than two months per fiscal year.~~

§411.406. Unallowable Costs. ~~Assistance may not be used to pay for any item listed in this section:~~

~~_____ (1) purchase or long-term lease of a vehicle, or routine vehicle maintenance;~~
~~_____ (2) an expense that is incurred before the written plan is approved;~~
~~_____ (3) income or property tax;~~
~~_____ (4) abortion or emergency room service;~~
~~_____ (5) a segregated service or activity (i.e., a service or activity that is targeted solely to persons with a mental disability or physical disability), except for health services and counseling and training services as described in §411.405(a)(3)-(4) of this title (relating to Allowable Costs);~~
~~_____ (6) any insurance premium;~~
~~_____ (7) a burial or funeral expense;~~
~~_____ (8) food that is not a specialized nutritional product;~~
~~_____ (9) routine shelter, routine utilities, routine home repair, routine home appliance, routine home furnishing, and yard work;~~
~~_____ (10) over-the-counter medication;~~
~~_____ (11) architectural modifications to any building except the person's natural home;~~
~~_____ (12) an expense related to the person's recreation;~~
~~_____ (13) school tuition or fee, or any educational support item required by law to be provided by the public school system;~~
~~_____ (14) school tuition or fee, or any educational support item for a child who is enrolled in private school or who is home-schooled;~~
~~_____ (15) restraint device (as defined);~~
~~_____ (16) routine child care for a child under the age of 13 years;~~
~~_____ (17) any service provided by an individual under the age of 18 years or by an individual who resides in the same household as the person; and~~
~~_____ (18) general medical care that is not related to a mental disability or co-occurring physical disability, as determined by TDMHMR, including but not limited to:~~
~~_____ (A) physical examination;~~

- ~~_____ (B) cancer treatment;~~
- ~~_____ (C) heart disease treatment;~~
- ~~_____ (D) sleep apnea treatment; and~~
- ~~_____ (E) treatment for diabetes.~~

§411.407. Eligibility Determination.

~~_____ (a) A person or family is eligible for assistance if the administering agency determines that the requirements of the diagnosis, residency, financial, and need factors as described in this subsection are met. Eligibility for assistance must be re-determined each fiscal year that a person or family receives assistance.~~

~~_____ (1) Diagnosis factor.~~

~~_____ (A) The person must:~~

~~_____ (i) have a mental illness diagnosed within the previous 12 months;~~

~~_____ (ii) have a diagnosis of mental retardation;~~

~~_____ (iii) have a diagnosis of pervasive developmental disorder; or~~

~~_____ (iv) be younger than four years of age and:~~

~~_____ (I) have a developmental delay diagnosed within the previous 12 months; or~~

~~_____ (II) determined to be eligible for early childhood intervention services.~~

~~_____ (B) The person meets the requirements of the diagnosis factor if:~~

~~_____ (i) the person or family submits a diagnosis or evaluation from a practitioner licensed or certified in a relevant profession that indicates the person meets the requirement in subparagraph (A) of this paragraph. The administering agency may require additional evaluations or documentation; or~~

~~_____ (ii) a professional staff of the administering agency who is licensed or certified in a relevant profession determines that the person meets the requirement in subparagraph (A) of this paragraph. The administering agency may require additional evaluations or documentation.~~

~~_____ (2) Residency factor.~~

~~_____ (A) The person must be currently living in his or her natural home, or the person must be leaving an institutional setting and moving into a home in the community.~~

~~_____ (B) The person or family applying for assistance meets the requirements of the residency factor if:~~

~~_____ (i) the person's natural home or intended home in the community is not:~~

~~_____ (I) an establishment that furnishes room, board, and general supervision in which four or more unrelated individuals reside;~~

~~_____ (II) a residential facility certified or licensed to provide services that include, but are not limited to, 24-hour supervision, home management, meals, transportation, and social and recreational activities (e.g., Intermediate Care Facility for the Mental Retarded (ICF/MR), state mental retardation facility); or~~

~~_____ (III) an inpatient facility (e.g., state mental health facility, general or psychiatric hospital); and~~

_____ (ii) _____ as determined by a utility statement, lease agreement, or other appropriate documentation, the person or family resides in the administering agency's specified service area or the person's intended home in the community is in the administering agency's specified service area, regardless of whether the person receives educational or other services in the specified service area of another administering agency.

_____ (3) _____ Financial factor.

_____ (A) _____ The financial factor is based on the current adjusted gross income or net earnings of:

_____ (i) _____ the person who is age 18 years or older and the person's spouse, if any; or

_____ (ii) _____ the biological or adoptive parents of a person who is under age 18 years.

_____ (B) _____ A person or family applying for assistance meets the requirements of the financial factor if the current adjusted gross income or net earnings is less than 150% of the current Texas median income level, as determined by appropriate documentation (e.g., previous year's federal income tax return, current pay stubs). Median income levels by state are established annually by the United States Census Bureau. The current Texas median income level is the level in effect on September 1st of the current fiscal year.

_____ (C) _____ If a person or family meets the requirements of the financial factor, then the administering agency staff must document and inform the person or family of the co-payment percentage determined in accordance with the Copayment Percentage Schedule, referenced as Exhibit A in §411.412(1) of this title (relating to Exhibits).

_____ (i) _____ A person's or family's co-payment percentage is zero if the current adjusted gross income or net earnings is less than 105% of the current Texas median income level.

_____ (ii) _____ A person's or family's co-payment percentage is above zero if the current adjusted gross income or net earnings is between 105% and 149.9% of the current Texas median income levels.

_____ (4) _____ Need factor.

_____ (A) _____ The person or family may not be receiving funds through the Texas Department of Human Services' In Home and Family Support Program. The person may not be enrolled in a comprehensive support program, including but not limited to any of the following programs:

_____ (i) _____ Home and Community-based Services (HCS) Program;

_____ (ii) _____ Home and Community-based Services OBRA (HCS O) Program;

_____ (iii) _____ Mental Retardation Local Authority (MRLA) Program;

_____ (iv) _____ Texas Home Living (TxHmL) Program;

_____ (v) _____ Community Living Assistance Support Services (CLASS);

_____ (vi) _____ Community Based Alternatives (CBA);

_____ (vii) _____ Program for People Who Are Deaf Blind with Multiple Disabilities;

_____ (viii) _____ Medically Dependent Children Program (MDCP); or

_____ (ix) _____ Consolidated Waiver Program.

_____ (B) _____ The person or family must have a need that can be met with an item:

~~_____ (i) _____ that is listed as an allowable cost in §411.405 of this title (relating to Allowable Costs);~~

~~_____ (ii) _____ that meets the criteria described in §411.404(a) of this title (relating to TDMHMR In-Home and Family Support Program—Criteria, Purpose, and Limitations); and~~

~~_____ (iii) _____ that is not available from any other support program.~~

~~_____ (C) _____ The administering agency staff will determine if the person or family applying for assistance meets the requirements of the need factor by consulting with the person or family and reviewing the results of the person's current evaluations, program plans, and medical reports, as well as researching other support programs in accordance with this subparagraph. For each identified item that meets the requirements in subparagraphs (B)(i) and (B)(ii) of this paragraph, the administering agency staff must determine if the person or family may be eligible to receive the item from any other support program.~~

~~_____ (i) _____ If the administering agency determines the person or family may be eligible to receive the item from any other support program, then the administering agency will provide the person or family with information on and referral to the other support program.~~

~~_____ (ii) _____ Denial of assistance for a specific item.~~

~~_____ (I) _____ The administering agency will deny assistance for a specific item if it determines that:~~

~~_____ (a) _____ the person or family is eligible to receive the item from an other support program and that the item is currently available from the other support program; or~~

~~_____ (b) _____ the person or family has not requested or applied for the item from the other support program after the administering agency provided the person or family with information on and referral to the other support program.~~

~~_____ (II) _____ Denial of assistance for a specific item under this clause does not constitute denial of assistance for other items that meet the requirements of subparagraph (B) of this paragraph.~~

~~_____ (III) _____ A person or family who has been denied assistance for a specific item under this clause is entitled to appeal the denial in accordance with §411.411 of this title (relating to Appeal).~~

~~_____ (D) _____ Meeting the requirements of the need factor.~~

~~_____ (i) _____ A person or family applying for assistance meets the requirements of the need factor if the administering agency:~~

~~_____ (I) _____ determines the person or family is not receiving funds through the Texas Department of Human Services' In-Home and Family Support Program;~~

~~_____ (II) _____ determines the person is not enrolled in a comprehensive support program; and~~

~~_____ (III) _____ determines the person or family would not be eligible to receive the item from any other support program or confirms with the person or family that the person or family is not eligible to receive the item from any other support program.~~

~~_____ (ii) _____ The administering agency may determine that the person or family meets the requirements of the need factor while an other support program's determination of the person's or family's eligibility is pending. The administering agency must confirm with the person or family that the person's or family's eligibility determination is pending.~~

~~_____ (iii) The administering agency may determine that the person or family meets the requirements of the need factor while the person or family is waiting for the item to be provided by an other support program. The administering agency must confirm with the person or family that the person or family is on record as waiting for the item to be provided by the other support program.~~

~~_____ (b) The administering agency staff may grant eligibility for assistance to a person or family in an emergency (as defined) without first determining if the person meets the requirements of the diagnosis factor (as described in subsection (a)(1) of this section), only if the requirements of the residency, financial, and need factors (as described in subsection (a)(2)-(4) of this section) have been met.~~

~~_____ (1) Assistance disbursed for an emergency under this subsection may be for no more than 60 days and is limited to the extent necessary to resolve that emergency. A written plan must be developed in accordance with 411.409(a) of this title (relating to Written Plan and Disbursing Assistance) and will address only those issues and items necessary to resolve the emergency.~~

~~_____ (2) If eligibility for assistance is granted for an emergency under this subsection, then the administering agency must determine and document if the person meets the requirements for the diagnosis factor within 30 days after disbursement of assistance.~~

~~_____ (3) If the administering agency determines that the person does not meet the requirements for the diagnosis factor, then the administering agency staff must immediately terminate assistance.~~

~~_____ (c) A person or family who has been determined not eligible for assistance is entitled to appeal the determination in accordance with §411.411 of this title (relating to Appeal).~~

~~_____ (d) A person or family may not appeal a decision by the administering agency staff to deny assistance for any item listed as an unallowable cost in §411.406 of this title (relating to Unallowable Costs).~~

~~§411.408. Applying for Assistance and Processing Applications.~~

~~_____ (a) Applying for assistance. Application for assistance must be made by the person or the person's family. If the person lives independently, then the person must be age 18 years or older to apply for assistance unless the person is or has been married or has had the disability of minority removed pursuant to the Texas Family Code, Chapter 31.~~

~~_____ (1) The administering agency may not discriminate against any person or family on the basis of race, color, national origin, religion, sex, age, disability, political affiliation, or sexual orientation.~~

~~_____ (2) Determining eligibility following application for assistance.~~

~~_____ (A) When funds have been appropriated. Within 30 days after a person or family applies for assistance, the administering agency is responsible for determining if the person or family is eligible for assistance in accordance with §411.407 of this title (relating to Eligibility Determination). The person or family is responsible for providing all necessary information for the administering agency to determine eligibility in a timely manner.~~

~~_____ (B) When funds have not been appropriated. If TDMHMR In Home and Family Support Program funds have not been appropriated at the time a person or family applies for assistance, then the person's name is placed on record as waiting for eligibility determination. A family waiting for eligibility determination is identified on the record by the name of the person on whose behalf the application for assistance is made. The person or family~~

is responsible for notifying the administering agency of changes to address or phone number while on record as waiting for eligibility determination.

_____ (i) _____ When funds have been appropriated, then the administering agency is responsible for contacting persons and families on record as waiting for eligibility determination in chronological order according to persons' and families' date of application.

_____ (ii) _____ The administering agency is responsible for determining if the person or family is eligible for assistance in accordance with §411.407 of this title (relating to Eligibility Determination) in a timely manner. The person or family is responsible for providing all necessary information for the administering agency to determine eligibility.

_____ (b) _____ Processing applications. The administering agency must process applications in chronological order according to persons' and families' date of eligibility as defined in §411.403(6) of this title (relating to Definitions). If more than one person or family has the same date of eligibility, then chronological order is based on the date of application.

_____ (c) _____ Record of waiting for assistance. If TDMHMR In-Home and Family Support Program funds are not available on a person's or family's date of eligibility, then the person's name is placed on record as waiting for assistance in the same order that the applications are processed. A family waiting for assistance is identified on the record by the name of the person on whose behalf the application for assistance is made.

_____ (1) _____ The administering agency must maintain a record of persons and families waiting for assistance continually from one fiscal year to the next.

_____ (2) _____ Persons and families on record as waiting for assistance must notify the administering agency within 10 days after a change in any eligibility factor (i.e., diagnosis, residency, financial, or need), as described in §411.407 of this title (relating to Eligibility Determination). If there has been a change in an eligibility factor, then the administering agency must determine if the person or family is eligible for assistance in accordance with §411.407 of this title (relating to Eligibility Determination) within 30 days after notification.

_____ (3) _____ The administering agency must contact persons and families on record as waiting for assistance annually to determine if there has been a change in any of their eligibility factors.

_____ (d) _____ Person or family considered an employer. Depending upon which provider is selected and the amount of services to be provided, an eligible person or family may be considered an employer, and thus responsible for employment related expenses. To assist the person or family in determining whether the person or family is an employer, the administering agency will provide the person or family with a copy of "Learning Your Responsibilities As An Employer," which is referenced as Exhibit B in §411.412(2) of this title (relating to Exhibits).

_____ (e) _____ Selecting provider or vendor and negotiating provider rates.

_____ (1) _____ The provider of a service and the prescriber of a service or item must have all certifications, registrations, licenses, and permits that are required by state law. The administering agency must establish minimum qualifications for providers of services and prescribers of services or items who are not required by state law to have certifications, registrations, licenses, or permits.

_____ (2) _____ The administering agency staff and the person or family must identify the required provider or vendor qualifications or product specifications for each item to be paid with assistance.

~~_____ (3) The selection of provider or vendor must be negotiated between the person or family and the administering agency based upon the provider's or vendor's qualifications and ability to provide the item.~~

~~_____ (4) The provider rate, negotiated between the selected provider and the person or family, is subject to approval by the administering agency. If the person or family determines that the person or family is an employer in accordance with subsection (d) of this section, then the negotiated rate for the service must include all employment related expenses as approved by the administering agency.~~

~~_____ (f) Architectural modifications: Pre-approval, soliciting competitive bids, and selecting a contractor or individual to perform the work.~~

~~_____ (1) Pre-approval.~~

~~_____ (A) Architectural modifications to be made to a person's natural home that is not owned by the person or family require the written approval of the property owner or property manager and pre-approval of the administering agency.~~

~~_____ (B) Architectural modifications to be made to a person's natural home that is owned by the person or family do not require written approval of the property owner nor pre-approval of the administering agency.~~

~~_____ (2) Soliciting competitive bids.~~

~~_____ (A) The administering agency staff and the person or family must identify the:~~

~~_____ (i) required contractor qualifications or required qualifications for the individual who will perform the work; and~~

~~_____ (ii) specifications for an architectural modification project.~~

~~_____ (B) Using the required qualifications and project specifications the person or family is responsible for soliciting and obtaining bids in accordance with this paragraph.~~

~~_____ (i) For costs between \$250 and \$600 three oral bids.~~

~~_____ (ii) For costs over \$600 three written bids.~~

~~_____ (iii) If only one bid is received, then the person or family must provide documentation to be included in the written plan verifying that no other contractor or individual is available to perform the work.~~

~~_____ (iv) A person or family is exempt from soliciting or obtaining bids for good cause, as determined by the administering agency and documented in the written plan.~~

~~_____ (3) Selecting a contractor or individual to perform the work. The selection of contractor or individual to perform the work must be negotiated between the person or family and the administering agency based upon best value. All relevant factors must be considered in determining best value, including, as appropriate, price, quality, reliability, promptness, and warranty.~~

§411.409. Written Plan and Disbursing Assistance.

~~_____ (a) Written plan. When TDMHMR In Home and Family Support Program funds are available, the administering agency staff must ensure a written plan is developed and approved in accordance with this subsection. A written plan is current only for the fiscal year for which it is developed.~~

~~_____ (1) The administering agency staff must meet with the person or family to develop a written plan. The written plan must include:~~

~~_____ (A) the name of the person;~~

~~_____ (B) the name of the administering agency staff who developed the written plan;~~

~~_____ (C) a description of:~~

~~_____ (i) the person's or family's need, as determined by the need factor;~~

~~_____ (ii) each item listed as an allowable cost in §411.405 of this title (relating to Allowable Costs) that has been identified to meet that need;~~

~~_____ (iii) how each item meets the criteria described in §411.404(a) of this title (relating to TDMHMR In Home and Family Support Program Criteria, Purpose, and Limitations); and~~

~~_____ (iv) the goal(s) and desired outcome(s);~~

~~_____ (v) how each item will assist in achieving the goal(s) and outcome(s); and~~

~~_____ (vi) how each item will positively impact the mental disability or co-occurring physical disability;~~

~~_____ (D) a specific description of:~~

~~_____ (i) each item to be paid for with assistance (e.g., equipment model number, type of training or counseling), including method of delivery;~~

~~_____ (ii) the quantity, frequency, and duration of each item;~~

~~_____ (iii) the cost or rate of each item; and~~

~~_____ (iv) the amount and frequency of payment, and designation of payee (i.e., recipient or administering agency);~~

~~_____ (E) other support programs that are appropriate for the person or family and that the person or family has contacted, and the outcome of that contact (e.g., ineligible, denied, waiting list) as required in §411.407(a)(4)(C) of this title (relating to Eligibility Determination);~~

~~_____ (F) a description of the required provider or vendor qualifications for each item to be paid with assistance and a statement by the person or family and administering agency staff that the selected provider or vendor meets the required qualifications or, if assistance will pay for architectural modifications, a description of the project's specifications and the required contractor qualifications or required qualifications for the individual who will perform the work and a statement by the person or family and administering agency staff that the selected contractor or individual meets the required qualifications;~~

~~_____ (G) the co-payment percentage and amount of co-payment;~~

~~_____ (H) a statement by the person or family that the person or family agrees to submit a receipt for each item purchased with assistance within 30 days after purchase and that the receipt will, at a minimum:~~

~~_____ (i) state the cost of the item and the co-payment amount;~~

~~_____ (ii) include the date or dates the item was provided, purchased, or delivered;~~

~~_____ (iii) include the name and address of the provider or vendor or, for architectural modifications, the name and address of the contractor or the individual performing the work; and~~

~~_____ (iv) _____ be marked as paid;~~
~~_____ (I) _____ a statement by the person or family that the person or family agrees to comply with the written plan and that the person or family understands noncompliance with the written plan may result in:~~
~~_____ (i) _____ immediate termination of assistance;~~
~~_____ (ii) _____ liability for restitution of assistance received; and~~
~~_____ (iii) _____ ineligibility for assistance;~~
~~_____ (J) _____ a description of how the administering agency will monitor the person's or family's compliance with the written plan, including:~~
~~_____ (i) _____ identifying the administering agency staff responsible for monitoring;~~
~~_____ (ii) _____ identifying documentation requirements for the person or family, such as maintaining a detailed provider log, obtaining and submitting receipts;~~
~~_____ (iii) _____ identifying monitoring activities, such as conducting home visits or face-to-face visits with the person or family, ensuring receipts are submitted and documented in accordance with subparagraph (H) of this paragraph, ensuring accurate completion of provider logs, reviewing receipts to ensure assistance is used to purchase approved items within 90 after disbursement of assistance; and~~
~~_____ (iv) _____ identifying the frequency of monitoring activities;~~
~~_____ (K) _____ a statement by the persons or family that the person or family understands the person or family:~~
~~_____ (i) _____ may not use assistance to purchase any item that has not been approved in the written plan;~~
~~_____ (ii) _____ must return any unused assistance to the administering agency by the earliest of the following dates:~~
~~_____ (I) _____ within 30 days after purchasing the item(s);~~
~~_____ (II) _____ within 30 days after the person or family or administering agency determines that assistance for the item is no longer needed; or~~
~~_____ (III) _____ within 30 days after the end of the fiscal year; and~~
~~_____ (iii) _____ may not use a provider or vendor who has not been approved in the written plan, or for architectural modifications, a contractor or individual to perform the work who has not been approved in the written plan;~~
~~_____ (L) _____ a statement by the person or family that, if the person or family is a child support obligor, the person or family is not more than 30 days delinquent in paying child support or is in compliance with a written repayment agreement or court order as to any existing delinquency;~~
~~_____ (M) _____ a statement by the person or family that the person or family understands the person or family is responsible for resolving any disputes with a provider, vendor, contractor, or individual who is paid with assistance;~~
~~_____ (N) _____ a statement by the person or family that the person or family understands it is a felony of the third degree to make or cause to be made a statement or representation the person or family knows to be false or to solicit or accept assistance for which the person or family knows the person or family is not eligible; and~~
~~_____ (O) _____ the signatures of the administering agency staff and the person or family who developed the written plan and the date it was signed.~~

~~_____ (2) The administering agency must designate a staff member who is responsible for approving written plans. Within 10 days after receipt of a written plan, the staff member must approve the written plan, disapprove the written plan, or approve the written plan with changes.~~

~~_____ (A) If the staff member disapproves the written plan, then the staff member must provide written information regarding the reasons for disapproval and the requirements for re-submission.~~

~~_____ (B) If the staff member approves the written plan with changes, then the staff member must provide written information regarding the necessary changes.~~

~~_____ (3) The administering agency must provide the person or family with a copy of the approved written plan.~~

~~_____ (b) Disbursement of assistance. Following approval of the written plan, the administering agency will disburse assistance in accordance with the written plan and this subsection. The amount of assistance disbursed to the recipient does not include the amount of the person's or family's co-payment.~~

~~_____ (1) Assistance of up to \$2500 per fiscal year will be provided to the person or family or to the provider, vendor, contractor, or individual performing work on behalf of the person or family and disbursed in a lump sum or on a periodic basis. Assistance provided under this paragraph may not be encumbered from one fiscal year to the next.~~

~~_____ (A) Special equipment purchased with assistance is the property of the recipient and may not be inventoried by the administering agency or TDMHMR.~~

~~_____ (B) Architectural modifications purchased with assistance belong to the property owner, and may not be inventoried by the administering agency or TDMHMR.~~

~~_____ (2) On a case-by-case basis, the TDMHMR commissioner or designee may grant assistance in excess of that described in paragraph (1) of this subsection.~~

~~_____ (c) Disbursement of assistance for an emergency. Assistance may be disbursed for an emergency to an eligible person or family on record as waiting for assistance. Assistance disbursed for an emergency under this subsection may be for no more than 60 days and is limited to the extent necessary to resolve the emergency. A written plan must be developed in accordance with subsection (a) of this section and will address only those issues and items necessary to resolve the emergency. The person or family will remain on record as waiting for assistance if the person or family continues to be eligible for assistance after the emergency is resolved.~~

~~_____ (d) Change in a recipient's eligibility factor. A recipient must notify the administering agency within 10 calendar days after a change in any eligibility factor (i.e., diagnosis, residency, financial, or need), as described in §411.407(a) of this title (relating to Eligibility Determination) has occurred. When notified of a change in an eligibility factor, the administering agency must determine if the recipient continues to be eligible for assistance in accordance with §411.407 of this title (relating to Eligibility Determination) within 30 days after notification. If the administering agency determines that the recipient is no longer eligible for assistance, then the administering agency must immediately terminate assistance. A recipient whose assistance has been terminated in accordance with this subsection is entitled to appeal the determination of ineligibility in accordance with §411.411 of this title (relating to Appeal).~~

~~_____ (e) Follow-up evaluation.~~

~~_____ (1) Following completion of assistance within the fiscal year. No later than 30 days after completion of assistance within the fiscal year in which it was disbursed, the~~

administering agency staff will provide written notification to the recipient stating that the recipient is responsible for contacting the administering agency within 30 days after receipt of the notification to arrange for a follow-up evaluation. If the follow-up evaluation indicates:

_____ (A) _____ the stated goal(s) and outcome(s) have been achieved, then assistance will cease and the person or family will exit the program; or

_____ (B) _____ the stated goal(s) and outcome(s) have not been achieved or an additional need has been identified, then staff will determine if the person or family meets the requirements of the need factor in accordance with §411.407(a)(4) of this title (relating to Eligibility Determination) and, if funds are available, amend the written plan.

_____ (2) _____ End of the fiscal year. No later than 90 days prior to the end of the fiscal year, the administering agency staff will provide written notification to the recipient stating that the recipient is responsible for contacting the administering agency within 30 days after receipt of the notification to arrange for a follow-up evaluation. If the follow-up evaluation indicates:

_____ (A) _____ the stated goal(s) and outcome(s) have been achieved, then assistance will cease and the person or family will exit the program; or

_____ (B) _____ the stated goal(s) and outcome(s) have not been achieved or an additional need has been identified, then staff will re-determine if the person or family is eligible for assistance in accordance with §411.407(a) of this title (relating to Eligibility Determination) and, if funds are available, develop a new written plan in accordance with subsection (a) of this section.

§411.410. Administrative Implementation.

_____ (a) _____ Programmatic and fiscal accountability. Each administering agency must maintain programmatic and fiscal records documenting its implementation of the TDMHMR In-Home and Family Support Program so that TDMHMR is able to conduct fiscal audits and programmatic reviews. The administering agency must retain programmatic and fiscal records for five years.

_____ (b) _____ Quality improvement. The administering agency must develop and implement quality improvement activities and processes to identify and address operational problems and areas needing improvement.

_____ (c) _____ Program indirect costs. The administering agency may use TDMHMR In-Home and Family Support Program funds to pay for indirect costs related to the program (e.g., salary, benefits, office space, and equipment for program staff) as allowed by the administering agency's contract with TDMHMR.

_____ (d) _____ Penalties.

_____ (1) _____ The administering agency may impose the following penalties on a recipient if the recipient does not comply with his or her written plan:

_____ (A) _____ immediate termination of assistance;

_____ (B) _____ restitution of assistance received; and

_____ (C) _____ ineligibility for further assistance.

_____ (2) _____ A recipient who has been penalized in accordance with paragraph (1) of this subsection is entitled to appeal the determination to impose penalties in accordance with §411.411 of this title (relating to Appeal).

_____ (e) _____ Coordination with Texas Department of Human Services' In-Home and Family Support Program (TDHS IHFS Program).

~~_____ (1) On a quarterly basis TDMHMR will coordinate with the TDHS IHFS Program to assure that no recipient is receiving funds from the TDHS IHFS Program. TDMHMR will refer discrepancies to the appropriate administering agency for resolution.~~

~~_____ (2) Each administering agency is responsible for the ongoing coordination with the TDHS office in the administering agency's service area to ensure that persons and families receiving funds through the TDHS IHFS Program are not also receiving assistance from the TDMHMR In Home and Family Support Program.~~

~~§411.411. Appeal.~~

~~_____ (a) Determinations subject to appeal. Only the following administering agency determinations may be appealed:~~

~~_____ (1) the determination to deny assistance for a specific item under §411.407(a)(4)(C)(ii)(III) of this title (relating to Eligibility Determination);~~

~~_____ (2) the determination that a person or family is not eligible for assistance under §411.407(c) of this title (relating to Eligibility Determination);~~

~~_____ (3) the determination that a recipient is no longer eligible for assistance under §411.409(d) of this title (relating to Written Plan and Disbursing Assistance); and~~

~~_____ (4) the determination to impose penalties under §411.410(d) of this title (relating to Administrative Implementation).~~

~~_____ (b) Written notification. Within 10 working days after making any determination described in subsection (a) of this section, the administering agency must provide written notification to the person or family that includes:~~

~~_____ (1) the administering agency's determination and the reason(s) for the determination;~~

~~_____ (2) a statement that the person or family may appeal the determination;~~

~~_____ (3) the procedures for requesting an appeal, including the required information;~~

~~_____ (4) a statement that the request for appeal must be received within 30 calendar days after receipt of the written notification; and~~

~~_____ (5) a description of the appeal and review process contained in "The TDMHMR In Home and Family Support Program Appeal and Review Process," which is referenced as Exhibit C in §411.412(3) of this title (relating to Exhibits).~~

~~_____ (c) Appeal and review process.~~

~~_____ (1) Appeal and appeal decision. The appeal is conducted in accordance with §401.464(g) of this title (relating to Notification and Appeals Process) and include a review of this subchapter and policies governing the TDMHMR In Home and Family Support Program. The administering agency will notify the appellant in writing of the appeal decision in accordance with §401.464(h). The notification must include:~~

~~_____ (A) the appeal decision;~~

~~_____ (B) a statement that the appellant has the right to have the appeal decision reviewed by the Office of Legal Services at TDMHMR Central Office if the appellant disagrees with the appeal decision; and~~

~~_____ (C) the procedures for requesting a review, including the time frames and required information as described in paragraph (2) of this subsection.~~

~~_____ (2) Review and final decision. If the appellant disagrees with the appeal decision, then the appellant may request a review by the Office of Legal Services at TDMHMR~~

~~Central Office. A request for review must be submitted to TDMHMR, Director of Legal Services, P.O. Box 12668, Austin, Texas, 78711-2668, and received within 10 working days after the appellant receives the appeal decision. The written request must include the appellant's name, address, telephone number with area code, the name of the administering agency, a copy of the appeal decision, and an explanation of why the appellant does not agree with the appeal decision.~~

~~_____ (A) The appellant may choose to have the reviewer conduct the review:
_____ (i) by telephone conference with the appellant and a representative from the administering agency providing verbal testimony and submitting documentation; or~~

~~_____ (ii) by desk review with the appellant and a representative from the administering agency submitting documentation.~~

~~_____ (B) The review will be conducted no sooner than 10 working days after receipt of the request for review and be completed no later than 30 working days after receipt of the request unless an extension is granted by the director of legal services~~

~~_____ (C) The review will include an examination of:~~

~~_____ (i) the appeal decision;~~

~~_____ (ii) all verbal testimony if the review was conducted by telephone conference;~~

~~_____ (iii) all documentation submitted by the appellant and the administering agency; and~~

~~_____ (iv) this subchapter and the In Home and Family Support Program Manual.~~

~~_____ (D) The reviewer may consult with TDMHMR staff who administer the TDMHMR In Home and Family Support Program and staff who are responsible for the policy contained in the rules governing the program.~~

~~_____ (E) The reviewer will make a final decision that will uphold, reverse, or modify the appeal decision.~~

~~_____ (F) Within five working days after the review, the reviewer will send written notification of the final decision to the appellant and the administering agency.~~

~~_____ (G) The administering agency will take appropriate action consistent with the final decision.~~

~~§411.412. Exhibits. The following exhibits are referenced in this subchapter, copies of which are available by contacting TDMHMR, Policy Development, P.O. Box 12668, Austin, TX 78751:~~

~~_____ (1) Exhibit A Copayment Percentage Schedule;~~

~~_____ (2) Exhibit B "Learning Your Responsibilities As An Employer"; and~~

~~_____ (3) Exhibit C "The TDMHMR In Home and Family Support Program Appeal and Review Process."~~

~~§411.413. References. Reference is made in this subchapter to the following statutes and rules:~~

~~_____ (1) Texas Health and Safety Code, Chapter 535, §533.035(a), §571.003, and §591.003;~~

~~_____ (2) Texas Family Code, Chapter 31;~~

~~_____ (3) Texas Probate Code, Chapter XIII;~~

- ~~_____ (4) TAC §48.2703(d) of Title 40 (relating to Income Eligibility); and~~
- ~~_____ (5) TAC §621.22(9) of this title (relating to Definitions).~~

~~§411.414. **Distribution.** This subchapter shall be distributed to:~~

- ~~_____ (1) members of the Texas Mental Health and Mental Retardation Board;~~
- ~~_____ (2) executive, management, and program staff of TDMHMR Central Office;~~
- ~~_____ (3) executive directors of all administering agencies; and~~
- ~~_____ (4) advocacy organizations.~~